3THE HONOURABLE SMT JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 13554 OF 2004

ORAL ORDER:
(Per T. Meena Kumari, J)

The present Writ Petition is filed questioning the Orders dated 15.3.2004 passed in O.A.No. 618 of 2003 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

The brief facts of the case are that:

Respondent filed O.A.Nos. 618 of 2003 before the Central Administrative Tribunal, Hyderabad Bench questioning the disengagement of her services in the petitioners Department. The respondent has approached the Tribunal by way of O.A. after a period of 6 years after her disengagement from service.

The learned counsel for the petitioners/Department submits that as per the Scheme of Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1989 (hereafter called as "Scheme"), Temporary Status can be conferred on casual labourers, those who have rendered a continuous services of at least one year out of which for a period of 240 days. The learned counsel for the petitioners further submits that as there was a ban on engagement of casual labourers after 31.3.1985, those casual labourers who were engaged prior to 31.3.1985 and had a continuous service of one year prior to 31.3.1985 and having 240 days in that year were conferred temporary status with effect from 1.10.1989.

It is the further contention of the learned counsel for the petitioners-department that the Scheme was further liberalized in December, 1993 making eligible the casual labourers who were engaged prior to 22.6.1988 and who were working continuously without break. Hence, the Scheme

was liberalized and one more relaxation was given making eligible those casual mazdoors who were continuously working as on 1.8.1998. It is the further contention of the learned counsel for the petitioners/Department that the respondent was not in continuous service as on 1.8.1998 as she was not engaged during the period from 1.12.1997 to 30.9.1998. As such the respondent is not eligible for grant of temporary status.

Originally, the respondent-applicant filed O.A. No. 618 of 2003 before the Central Administrative Tribunal and the same was allowed by an Order dated 15.3.2004, which reads thus:

> "The Tribunal directed the respondents to reengage the services of the applicant and grant her temporary status, as applicable to the persons who were earlier working till 1998 and thereafter and who had completed 240 days of work in a calendar year. These orders be complied with by the respondents within a period of one month from the date of receipt of this order."

Challenging the Order of the learned Central Administrative Tribunal, the petitioners-Department have filed the present Writ Petition.

This Court while admitting the writ petition, has granted interim suspension of the order of the learned Tribunal. Aggrieved by the said interim suspension, the respondent filed a Vacate State petition in W.V.M.P.No.2589 of 2006. Since the matter requires final disposal of the writ petition, both Vacate Stay Petition and the Writ Petition are heard and disposed of jointly.

Heard both sides.

The learned counsel for the petitioners/Department submits that the respondent has been disengaged from service with effect from 1.12.1997 and subsequently a show cause notice was issued. It is further contended by the learned counsel for the petitioners/Department that the respondent sought to avail the benefit of Scheme, which was given effect to the casual mazdors giving temporary status to the available casual mazdoors, who were continuously working as on 1.8.1998. The respondent was not in

continuous engagement as on 1.8.1998 as she was not engaged during the period from 1.12.1997 to 30.9.1998. Therefore, the petitioners submit that the respondent is not eligible for grant of temporary status.

The learned counsel for the petitioners/Department further submits that the respondent has not completed 240 days. Since there is no material placed by the respondent either before the tribunal or before this Court, there cannot be any direction to reinstate her into service. The learned counsel for the petitioners/Department further submits there is no material placed either before the tribunal or before this Court to show that the respondent has made number of representations to the Department, but only has chosen to approach the tribunal without any material after a period of six years. Though the respondent has approached the Court belatedly after a period of six years, it cannot be said that the O.A. was filed within a reasonable time seeking relief sought for.

On the other hand, the learned counsel for the respondent contended that as the show cause notice dated 31.10.1997 was withdrawn by a subsequent notice dated 28.11.1997, it would be deemed that she was re-engaged from the post of Typist, which was held prior to the notice dated 31.10.1997 and she would be entitled for the relief sought in O.A.

We have perused the entire material placed before this Court. It is crystal clear that on 31.10.1997, there was a disengagement Notice issued to the respondent by Sub-Divisional Engineer (HRD), O/o the TDM, Kurnool. But there is no material placed either before the tribunal or before this Court to show that she has been engaged subsequently as a Typist or in any other post in the Telecom District, Kurnool. In the absence of such material available, it cannot be said that the respondent has been continued to work in the post of Typist. It is also to be observed that the observation made by the learned Tribunal that the respondent may be notionally treated as having not being disengaged from 1.12.1997, but

continued in service cannot be accepted, without there being any material placed either before the tribunal or before this Court that the respondent worked for 240 days.

Under the above circumstances, we find that the Scheme of Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1989 cannot be extended to the respondent for the reason that the respondent was not in employment as on 1.8.1999. As there was no material available that the respondent was engaged by the petitioners-Department, it cannot be said that the respondent is entitled for engaging as casual labour.

Accordingly, the Writ Petition is allowed.

However, it is made clear that this order will not preclude the petitioners/Department from engaging the respondent as a fresh candidate in any of the post available as per rules in any of the casual employment if available.

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T. MEENA KUMARI, J

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G. CHANDRAIAH, J

5.6.2007

CHV